IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 910 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DADUSING G CHAUHAN

Versus

DIVISIONAL CONTROLLER

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Appearance:

1. Special Civil Application No. 910 of 1993

MR MUKESH H RATHOD for Petitioner No. 1

MR HARDIK C RAWAL for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/01/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the award made by Labour Court, Vadodara in Reference (L.C.V.) No. 11 of 1984 dated 3rd January, 1989, to the

extent that it has denied backwages to the petitioner and to quash and set aside the penalty of stoppage of three annual increments with permanent effect.

2. The facts of the case stated in nutshell are as follows:-

2.1. The petitioner at the relevant time was working as driver with the respondent and he was discharging his duty in Dabhoi Depot within Vadodara Division. On 3rd April, 1981, he was driving bus bearing registration no. 4312 on the route between Kantheshwar and Dabhoi. It appears that there is a railway crossing on the route, which was closed when the said bus was about to approach it. It also transpires from the record that since the crossing was closed, there were two or three vehicles already waiting there. The petitioner tried to overtake these vehicles and bring his vehicle very near to the railway crossing. But in the process, he collided with a truck already standing there and that caused damage to both the vehicles and also injuries to some of the passengers travelling in the bus driven by the petitioner. This accident took place solely due to negligence and rashness of the petitioner. He was, therefore, chargesheeted for the same, since, the respondent intended to initiate departmental proceedings against him. It may be noted here that the petitioner was also prosecuted in a criminal case for driving his vehicle in a rash and negligent manner so as to endanger the human life. In response to the chargesheet, the petitioner submitted his reply wherein, he had taken the defence that collision took place because of failure of the break of the S.T. Bus. It also appears that in the criminal case, he was acquitted by the concerned Criminal Court. However, in the departmental proceedings it was held that the accident had taken place on account of negligence and rashness of the petitioner. The competent authority therefore, imposed penalty of stoppage of three annual increments with permanent effect. The said order was passed on 30th December, 1981.

2.1. The petitioner being aggrieved by the said order, preferred appeal to the appellate authority. However, the appellate authority before giving any decision in the appeal, suo motu reviewed the case of the petitioner and issued a showcause notice calling upon him to showcause as to why the order of dismissal from service should not be passed against him. It also transpires that on 20th June, 1983 the appellate authority passed order imposing punishment of dismissal from the service.

2.2. Since the petitioner's request to reinstate him

on his original post was not accepted, he raised dispute which ultimately, came to be referred to the Labour Court for adjudication by way of Reference under Section 10 (1) (C) of the Industrial Disputes Act, 1947.

2.3. Before the Labour Court, the petitioner mainly contended that there was no negligence on his part and the accident had taken place solely because the break of the vehicle had failed and, therefore, he had lost control on the vehicle. It was further contended that in the prosecution, he was acquitted by the concerned Criminal Court since no offence was proved against him. He has also averred that no opportunity was given to him to defend his interest before passing the order of dismissal from the service.

2.4. The said claim of the petitioner was contested by the respondent wherein, it contended that the petitioner was incharge of the Bus which he drove negligently and in a rash manner resulting into accident. Because of the said accident, the vehicle suffered damage to the extent of Rs. Five to Seven thousand and about nine passengers travelling in the said vehicle received various types of injuries, out of which three passengers had received stitches.

2.5. Before the Labour Court no serious challenge was made to the validity of the inquiry proceedings. The Labour Court on the strength of the material produced before it came to the conclusion that the order of punishment dismissing the petitioner from the service was quite harsh, requiring its interference with it under Section 11 (A) of the Industrial Disputes Act. The Labour Court came to the conclusion that the penalty of stoppage of increments for three years with permanent effect was appropriate punishment and it was not required to be disturbed by the appellate authority. It, therefore, quashed and set aside the order of dismissal. However, the first order of penalty imposed by the disciplinary authority with regard to stoppage of three annual increments with future effect was reimposed. It also denied backwages to the petitioner considering the circumstances of the case. The same is now being challenged before this Court.

3. Mr.Rathod learned advocate appearing for the petitioner has submitted that this was purely a case of accident which had taken place on account of technical defect that had occurred in the vehicle viz. the failure of the breaks. He has further submitted that the petitioner was prosecuted in a criminal case wherein, he

was acquitted at the end of the trial. His further submission is that when the petitioner is reinstated, some minor punishment ought to have been imposed upon him and not the punishment of stoppage of three annual increments with permanent effect and also denial of backwages.

4. Having gone through the record of the petition and in particular the judgment of the Labour Court and having carefully consider the submissions advanced by Mr.Rathod, it clearly appears that the petitioner was responsible for colliding his vehicle with a stationary truck resulting into damage to the vehicle as well as injuries to nine passengers travelling in his bus. It also appears from the record that on the date of the accident, when the petitioner was driving his vehicle on the route between Kantheshwar to Dabhoi, while he was approaching the railway crossing, which was at the relevant time was closed, he tried to overtake the stationary truck and take his bus in front of these vehicles. As a driver of the bus belonging to the State Transport Corporation, having number of passengers in it, it was incumbent upon him to exercise due care and caution while driving the bus, so that the safety of not only the passengers but other user of the route was not in danger. In the instant case, the petitioner has behaved in a contrary manner and has failed to take proper care while driving his vehicle. This finding of fact has remained consistent at all stages i.e. in the inquiry, in the appeal and also in the proceedings before the Labour Court. However, the Labour Court has taken into consideration certain factors which are treated to be in favour of the petitioner namely that there was no loss of life, that damage to the vehicle was not extensive, that witnesses i.e. drivers of other vehicles have not been examined etc., and has held there was no need for the appellate authority to review the case and impose penalty of dismissal. The Labour Court has also come to the conclusion that the act of negligence should not be assessed on the strength of the consequences of the accident. However, when it has though it fit to retain the punishment imposed by the disciplinary authority with regard to the stoppage of increments, it is very clear that the act of negligence of the petitioner has been accepted by it. May be in the opinion of the Labour Court it was not so serious so as to warrant the imposition of the punishment of dismissal from the service. When the Labour Court has applied its mind and has taken the order of punishment in consideration while exercising power under Section 11 (A) of the Industrial Disputes Act, it is not now open for

this Court to reappreciate the facts even with a view to see the propriety of the order of penalty passed by the Labour Court. Even otherwise also considering the facts and circumstances which have been brought on record, it clearly appears that the view taken by the Labour Court is just and proper and it cannot be termed as unreasonable or perverse warranting interference by this Court. There is no substance in this petition and it is hereby ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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